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OFFICE OF PETITIONS

In re Application of :
Boris Leschinsky :
Application No. 09/880,241 : **DECISION ON PETITION**
Filed: June 13, 2001 :
Attorney Docket No. DATA 10 CON CIP :

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR 1.137(a)," filed October 24, 2003, which is properly considered as a petition to withdraw the holding of abandonment pursuant to §1.8(b)¹. This petition was recently forwarded to the undersigned for consideration.

The petition under § 1.181 is **GRANTED**.

The above-identified application became abandoned for failure to file a timely and proper reply to the non-final Office action mailed February 26, 2003. This Office action set a shortened statutory period for reply of three (3) months from the mailing date of the action, with extensions of time obtainable pursuant to 37 CFR 1.136(a). No reply having been received and no extension of time made of record, the above-identified application became abandoned effective May 27, 2003. A Notice of Abandonment was mailed on September 24, 2003.

Petitioner filed the instant petition (and petition fee under § 1.137(a)), asserting that the response, including a petition for extension of time, was timely filed. In support thereof, petitioner submitted copies of the response and petition for extension of time as petitioner maintains they were timely filed.

¹ (b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned ..., the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission.

Petitioner's evidence has been considered, and it has been determined that withdrawal of the holding of abandonment pursuant to § 1.8(b) is warranted. Petitioner's evidence shows that the correspondence was timely filed pursuant to § 1.8(a). The instant petition was promptly filed. Both the response and the petition for extension of time bear a proper certificate of mailing under 37 CFR 1.8(a), executed by patent attorney J. Gary Mohr and certifying timely mailing on August 25, 2003. On petition, attorney Mohr attests to the previous timely mailing. Furthermore, a review of Office finance records reveals that as of August 2003, the authorized Deposit Account had sufficient funds to pay the extension of time fee had the fee been presented.

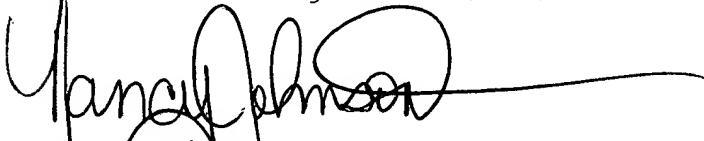
In view thereof, the response is considered timely filed, the Notice of Abandonment is VACATED and the holding of abandonment is hereby WITHDRAWN.

Since consideration of the petition under § 1.137(a) is unnecessary for the reasons cited, the petition fee is subject to refund.

However, the fee for the extension of time, at the rate in effect on August 25, 2003, is due. Accordingly, the \$110 petition fee is being transferred to pay the extension fee. To complete payment of the extension fee, \$820 is being charged to Deposit Account No. 04-0170, as authorized.

The application file is being forwarded to Technology Center 3763 for consideration of the amendment resubmitted October 24, 2003.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0309.



Nancy Johnson
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Office of Petitions